

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHAYLA SOMMER,

*

Plaintiff,

*

v.

*

Civil Action No.:

BMW OF NORTH AMERICA, LLC, et al., *

Defendants.

*

* * * * *

NOTICE OF REMOVAL

Defendant BMW of North America, LLC (“BMW NA”), by its attorney, removes to this Court *Sommer v. BMW of No. Amer., LLC, et al.*, which was filed in the Circuit Court for Anne Arundel County, Maryland, under Case No. C-02-CV-20-00996 (“*Sommer*”). In support, BMW NA says the following:

1. *Sommer* is a product-liability and motor-tort action between citizens of different states, in which the matter in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a)(1); 28 U.S.C. § 1441(a); *see* Exhibit 1 (*Sommer* Complaint) at 7, 9-10 (stating dollar value of damages claimed). Plaintiff Shayla Sommer alleges that she is a resident of Tennessee. *See* Ex. 1, ¶ 2. Defendant BMW NA is a limited liability company whose sole member is BMW (US) Holding Corporation, a Delaware corporation whose principal place of business is located in New Jersey. Co-Defendant Christopher W. Hnatiuk is alleged to be a resident of Maryland. *See id.*, ¶ 4.

2. *Sommer* was filed in the Circuit Court for Anne Arundel County on March 30, 2020. *See* Exhibit 2 (Maryland Electronic Court Docket Printout, *Sommer*; website last visited: October 19, 2020). On April 3, 2020, that Court issued one or more summons. *See id.* Neither

Defendant was served within sixty days, as a consequence of which the summons became dormant, renewable only on written request of the Plaintiff. *See* Md. R. 2-113. The Circuit Court for Anne Arundel County reissued one or more summons on September 25, 2020. *See* Ex. 2.

3. On October 13, 2020, Plaintiff filed in the Circuit Court for Anne Arundel County a return of service on Corporation Trust, resident agent for BMW NA. *See* Ex. 2. A genuine and authentic copy of the process, pleading(s), and order(s) served on BMW NA via Corporation Trust is attached as Exhibit 1. 28 U.S.C. § 1446(a).

4. On information and belief, Plaintiff has not yet served Co-Defendant Hnatiuk. *See* Ex. 2.

5. As Co-Defendant Hnatiuk has not been served, there is no “part[y] in interest properly joined and served ... [that] is a citizen of the State in which such action is brought,” 28 U.S.C. § 1441(b)(2), and removal is proper. *See Al-Ameri v. Johns Hopkins Hosp.*, No. 1:15-cv-1163-GLR 2015, U.S. Dist. LEXIS 174300, *5 (D. Md. Jun. 24, 2015); *Robertson v. Iuliano*, No. 1:10-cv-1319-RDB, 2011 U.S. Dist. LEXIS 11123, 2011 WL 453618, at *1 (D. Md. Feb. 4, 2011). Plaintiff had a more-than-reasonable opportunity – over six months – to effect service, and did not do so. *See Medish v. Johns Hopkins Health Sys. Corp.*, 272 F. Supp. 3d 719, 725 (D. Md. 2017) (distinguishing *Robertson*, which was removed fifty-two days after filing in state court, as being a case in which “much time had elapsed, during which service reasonably could have occurred, before defendants removed”).

6. Because Co-Defendant Hnatiuk has not been served, his consent to removal is not required. 28 U.S.C. § 1446(b)(2)(A).

7. Removal to the United States District Court for the District of Maryland is proper because the Circuit Court for Anne Arundel County is located within the geographical boundaries of this district. 28 U.S.C. § 1446(a).

8. Contemporaneous with this filing, BMW NA is providing the Circuit Court for Anne Arundel County notice of the filing of this Notice of Removal. 28 U.S.C. § 1446(d).

WHEREFORE, this action is removed to the United States District Court for the District of Maryland.

Date: October 19, 2020

Respectfully submitted,

/s/

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Attorney for BMW of North America, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 19th day of October, 2020, the foregoing paper was served via first-class mail, postage prepaid, on Tony N. Garcia, Esquire, Bates & Garcia, LLC, 201 N. Charles Street, Baltimore, MD 21202, and Michael Glass, Esquire, Law Office of Michael Glass, 201 N. Charles Street, Baltimore, MD 21202, *Attorneys for Plaintiff Shayla Sommer*; and Defendant Christopher W. Hnatiuk, 2613 Commander Davis Drive, Edgewater, Maryland 21037, *pro se*.

/s/

Andrew Gendron